



## **Weekly Summary of Cases**

### **National Labor Relations Board**

Week of November 15-19, 2010, W-3287

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### **Summarized Board Decisions**

***Atlantis Health Care Group (P.R.), Inc.*** (24-CA-11300; 356 NLRB No. 26) November 15, 2010, Ponce, Aguadilla, and Fajardo, PR. [[HTML](#)] [[PDF](#)]

The Board adopted the administrative law judge's finding that the employer violated the Act by unilaterally reducing the wage rates of the employees in three bargaining units by 30 to 45 cents per hour. The judge noted that wages are a mandatory subject of bargaining; that during contract negotiations an employer may not make unilateral changes without bargaining to impasse; that the employer's wage reductions presented the union with a *fait accompli*; and that absent from this case were exculpatory economic exigencies or waiver by the union. The judge also found irrelevant the employer's belief that it had mistakenly granted a wage increase which the employer then rescinded, and the union's failure to object to the allegedly mistakenly granted increase. Member Hayes included a personal footnote rejecting the employer's contention that it "erroneously" granted the wage increase. Member Hayes noted that the employer's action was consistent with a practice of granting annual wage increases for six straight years, including granting the preceding wage increase in the absence of any contract or contract extension calling for it. Member Hayes noted that this history negated any possible inference that the increase at issue was mistaken because the extant contract extension made no mention of a wage increase.

Charge filed by Union General de Trabajadores de Puerto Rico, w/w Service Employees International Union (SEIU), Local 1199. Administrative Law Judge William N. Cates issued his decision April 21, 2010. Chairman Liebman and Members Pearce and Hayes participated.

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***Kansas City Repertory Theatre, Inc.*** (17-RC-12647; 356 NLRB No. 28) Kansas City, MO, November 16, 2010. [[HTML](#)] [[PDF](#)]

The Board majority affirmed the Regional Director's conclusion that the petitioned-for musicians constitute an appropriate unit for collective bargaining, and his application of the alternative eligibility formula set forth in *The Juilliard School*, 208 NLRB 153, 155 (1974). The Board majority rejected the Employer's argument that the musicians were not eligible to vote because the requested unit consisted entirely of temporary or irregularly employed casual employees. The Board majority found that all of the employees in the petitioned-for unit worked intermittently, and the Act does not exclude such employees from exercising the rights vested in

them by Section 9 of the Act. The Board majority found that the Act “vests in such employees, rather than the Board, the decision whether they will benefit from collective-bargaining,” and that “the employees in the petitioned-for unit had a right to petition and the Regional Director properly processed that petition.” Member Hayes, dissenting, found that the evidence failed “to establish that the petitioned-for musicians have a reasonable expectation of future employment with the employer.”

Petitioner – Kansas City Federation of Musicians, Local 34-627, A.F.M. Regional Director for Region 17 issued a Decision and Direction of Election on December 28, 2009. Members Becker, Pearce, and Hayes participated.

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***Gateway Care Center*** (22-CA-28708; 356 NLRB No. 34) Eatontown, NJ, November 19, 2010. [[HTML](#)] [[PDF](#)]

The Board agreed with the administrative law judge that the employer, which operates a nursing home, violated the Act by refusing to execute an agreed-upon collective-bargaining agreement. Based on an admission in the employer’s answer to the complaint and on testimony of the union’s witnesses, whom the judge found credible, the judge found that the parties reached agreement on a written contract, which the employer then refused to sign. The Board adopted the judge’s findings, but modified his remedy to make the employees whole for any losses resulting from the violation.

Charge filed by 1199 SEIU Healthcare Workers East, New Jersey Region. Administrative Law Judge Eleanor MacDonald issued her decision December 28, 2009. Chairman Liebman and Members Becker and Hayes participated.

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## **Decisions in cases involving prior rulings by two-member Board**

The following cases involve prior rulings by the two-member Board, whose authority to act was rejected by the U.S. Supreme Court decision in *New Process Steel, LP* (June 17, 2010). The new decisions summarized here were reached by a three-member panel of the Board or by the full Board.

***Essex Valley Visiting Nurses Association and New Community Corporation and New Community Health Care, Inc.*** (22-CA-24770; 356 NLRB No. 18) East Orange, NJ, November 16, 2010. [[HTML](#)] [[PDF](#)]

The Board found that three named employers constituted a single employer and a single integrated enterprise. As a result, the three named employers were found to be jointly and severally liable for the backpay due to four employees as a result of Respondent Essex Valley Visiting Nurses Association's unfair labor practices. In addition, the Board denied the Respondent's motion to dismiss the compliance specification and found that the Respondent did not establish that the employees had failed to mitigate backpay.

Charge filed by Health Professional and Allied Employees, Local 5122. Administrative Law Judge Mindy E. Landow issued her supplemental decision January 19, 2007. Chairman Liebman and Members Becker and Hayes participated.

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***Monmouth Care Center*** (22–CA–27287, et al.; 356 NLRB No. 29) Long Branch, NJ, November 17, 2010. [[HTML](#)] [[PDF](#)]

The Board found that the respondents violated the Act by failing and refusing to supply timely and complete information requested by the union orally and in its letters, and by failing and refusing to bargain in good faith by failing to meet at reasonable times with the union.

Charges filed by SEIU 1199 New Jersey Health Care Union. Administrative Law Judge Steven Fish issued his decision November 10, 2008. Chairman Liebman and Members Becker and Hayes participated.

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***Wayneview Care Center and Victoria Health Care Center*** (22-CA-26987 et al.; 356 NLRB No. 30) Wayne and Matawan, NJ, November 18, 2010. [[HTML](#)] [[PDF](#)]

The Board, affirming the administrative law judge, held that the Respondents, two nursing homes that share the same chief operating officer, committed various violations of the Act in connection with collective-bargaining negotiations, a resulting strike at the Victoria facility, and lockouts at both facilities. Specifically, the Board found that both Wayneview and Victoria implemented a final contract offer in the absence of a valid impasse, refused to meet with the union, refused to provide the union with certain requested information, and unlawfully locked out their employees. In finding the lockouts unlawful, the Board emphasized that the employers did not argue that the lockouts were lawful “offensive” lockouts to pressure the union to accept a legitimate bargaining position. The Board adopted the judge’s findings that both lockouts were unlawful because they sought to coerce the union to accept an unlawful, unilaterally implemented final contract offer; because the employers failed to show that either lockout was a lawful “defensive” lockout necessary to ensure continued patient care; and because the employers eventually began allowing some employees but not others to return to work, resulting in partial lockouts for which the employers did not show a legitimate business justification.

Charges filed by SEIU 1199, New Jersey Health Care Union. Administrative Law Judge Eleanor MacDonald issued her decision July 26, 2007. Chairman Liebman and Members Becker and Hayes participated.

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***Goffstown Truck Center, Inc.*** (1-RC-22272: 356 NLRB No. 33) Londonderry, NH, November 18, 2010. [[HTML](#)] [[PDF](#)]

The Board reversed the hearing officer’s recommendation to overrule the employer’s objection alleging that a union organizer visited employees at their homes and represented that she was

acting with the authorization of the NLRB. The Board found the conduct objectionable, set aside the election, and directed a third election.

Petitioner – Chauffeurs, Teamsters, and Helpers Local 633, a/w International Brotherhood of Teamsters. Hearing Officer Lisa J. Fierce issued her report and recommendations January 11, 2010. Chairman Liebman and Members Becker and Pearce participated.

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## **Unpublished Board Decisions in Representation Cases**

***Tully Environmental, Inc., d/b/a Evergreen Recycling of Corona*** (29-RC-11915) Corona, NY, November 16, 2010. No exceptions having been filed to the Administrative Law Judge's report, the Board adopted the ALJ's findings and recommendations, and found that a certification of representative should be issued. Petitioner – United Plant and Production Workers, Local 175.

***Tyco Electronics Corporation*** (05-RC-16471) Waynesboro, PA, November 16, 2010. Order denying employer's request for review of the Regional Director's decision and direction of election. Petitioner – International Union, United Automobile, Aerospace, & Agricultural Implement Workers of America, UAW. Chairman Liebman and Members Becker and Hayes participated.

***Benicia Police Department – City of Benicia*** (20-WH-20) Benicia, CA, November 16, 2010. CERTIFICATION OF REPRESENTATIVE AS BONA FIDE UNDER SECTION 7(B) OF THE FAIR LABOR STANDARDS ACT OF 1938. Petitioner – Benicia Dispatchers Association.

***Pop Displays USA, LLC*** (2-RC-23492) Yonkers, NY, November 17, 2010. Order denying petitioner's request for review of the Regional Director's administrative dismissal of the petition. Chairman Liebman and Members Becker and Hayes participated.

***RC Operator, LLC d/b/a Willow Terrace*** (4-RC-21722) Philadelphia, PA, November 17, 2010. Order denying employer's request for review of the Regional Director's decision and request to withdraw from the stipulated election agreement. Petitioner – District 1199C, National Union of Hospital and Health Care Employees, AFSCME, AFL-CIO. Chairman Liebman and Members Becker and Hayes participated.

***RC Operator, LLC d/b/a Willow Terrace*** (4-RC-21728) Philadelphia, PA, November 17, 2010. Order denying petitioner's request for review of the Regional Director's decision and Order dismissing petition. Petitioner – District 1199C, National Union of Hospital and Health Care Employees, AFSCME, AFL-CIO. Chairman Liebman and Members Becker and Hayes participated.

***Fondo Para El Fomento De Industria Lechera*** (24-RC-8685) San Juan, PR, November 17, 2010. Order denying employer's request for review of the Regional Director's decision and direction of election. Petitioner – Office and Professional Employees International Union (OPEIU), AFL-CIO, CLC. Chairman Liebman and Members Becker and Hayes participated.

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## Decisions of Administrative Law Judges

***Verizon New York, Inc.*** (29-CA-30039; JD(NY)-46-10) Northport, NY. Charge filed by Communications Workers of America, AFL-CIO. Administrative Law Judge Eleanor MacDonald issued her decision November 16, 2010. [[HTML](#)] [[PDF](#)]

***A.W. Farrell's & Sons, aka A.W. Farrell & Son, Inc.*** (28-CA-22599; JD(SF)-43-10) Las Vegas, NV. Charge filed by Sheet Metal Workers' International Association, AFL-CIO-CLC, Local 88. Administrative Law Judge Lana Parke issued her decision November 18, 2010. [[HTML](#)] [[PDF](#)]

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